



# Town of Walpole Commonwealth of Massachusetts Zoning Board of Appeals

John Lee, Chairman  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Mary Jane Coffey, Member  
Rick Merrikin, Member  
Drew Delaney, Assoc Member

November 6, 2019

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TOWN OF WALPOLE  
TOWN CLERK

## DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 24-19

### APPLICANT

New England Bar Pizza Co. d/b/a Crisp

### LOCATION OF PROPERTY INVOLVED

1049 Main Street, Walpole, MA and shown on the Assessors Map 33 and Parcel 355, Zoning District: Residence CBD

### APPLICATION

A Variance under Section 6.B-D of the Zoning Bylaw to allow an addition to the rear of an existing non-conforming building which will be four (4') from the rear property line where ten (10') is required.

On October 16, 2019 a Public Hearing was held, and continued to November 6, 2019 in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to the granting of a **Variance** for the relief requested.

The following members were present and voting:

John Lee, Chairman  
Susanne Murphy, Vice Chairman  
Robert Fitzgerald, Clerk  
Mary Jane Coffey, Member  
Rick Merrikin, Member

A motion was made by Merrikin and seconded by Coffey to grant a Variance from Section 6.B-D. of the Zoning Bylaw to allow an addition to the rear of an existing non-conforming building which will be four (4') from the rear property line where ten (10') is required.

The vote was **5-0-0 in favor** (Lee, Murphy, Coffey and Fitzgerald, Merrikin voting); therefore the application for a **Variance** under Section 6.B-D is hereby **granted**, subject to the following conditions:

### CONDITIONS

1. The addition shall be located and constructed as shown on the plans submitted at the Public Hearing on November 6, 2019 dated 10/28/19, "Crisp, 1049 Main Street Walpole, MA 02081" pages A1.2 and A2.1, by MM+a Architects of Dedham, MA 02026 and "Certified Plot Plan of Land located at 1049 Main Street, Walpole MA," dated 10/30/19, by Continental Land Survey, LLC of 105 Beaver Street, Franklin, Ma, signed and stamped by Christopher C. Charlton.
2. There shall be no further relief granted.

### **REASONS FOR DECISION**

It is the finding of the Board that the applicant was able to meet the requirements for the granting of a Variance, as per the following:

1. *Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship to the appellant or petitioner.*

This variance was previously granted by the Zoning Board of Appeals in 2015, Case No. 05-15, and therefore the applicant is proposing nothing beyond what was previously proposed and granted in 2015. Due to the narrow triangular shape of the lot, the applicant's only alternative for incorporating modern refrigeration into the design is to bump out the rear of the building, in a manner that is parallel to the rear lot line, resulting in a building that is only two feet closer to the rear lot line than the existing condition.

2. *Desirable relief may be granted without substantial detriment to the public good.*

This variance was previously granted by the Zoning Board of Appeals in 2015, Case No. 05-15, and therefore the applicant is proposing nothing beyond what was previously proposed and granted in 2015. The rear lot line contains a stockade fence blocking the view from the abutter's side yard and is the minimal relief that could be granted to accommodate the request. There was no opposition to the proposed project presented in writing or at the public hearing.

3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

This variance was previously granted by the Zoning Board of Appeals in 2015, Case No. 05-15, and therefore the applicant is proposing nothing beyond what was previously proposed and granted in 2015. The intent of the rear yard requirement is

to protect abutting properties. In this case, the rear yard is bounded by a stockade fence providing visual protection to the abutter. There was no opposition to the proposed variance.

**Consistency: This decision is consistent with purpose and intent of the Zoning By-laws.**

**The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.**

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Said Variance is granted pursuant to Massachusetts General Laws c. 40A, s. 10 which provides in pertinent part as follows: "If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty (30) days of the date of application thereof, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section."

Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"...No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant."

**MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF C. 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.**

WALPOLE ZONING BOARD OF APPEALS

  
Robert Fitzgerald, Clerk 

RF/am

cc: . Town Clerk    Applicant    Building Inspector

This decision was made on November 6, 2019 and filed with the Town Clerk on November 18, 2019.